IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.7929 OF 2003

With

WRIT PETITION NO.7930 OF 2003

Shri Anil Aligh & Anr. : Petitioners

V/s.

Amar Giay Co-op. Premises Society Ltd. : Respondent

...

Mr.Kishor Patil for the petitioners.

Mr.K.K.Malpathak for the respondent.

...

CORAM : S.A. BOBDE, J.
February 4, 2005.

P.C.:

1. The Co-operative Courts below have concurrently found that the petitioners are not entitled to use the disputed open space of 60’ x 20’ and for carrying on any structure on that stretch.

2. The respondent-society filed a dispute and claimed mandatory order directing the petitioners to remove certain shed which they had constructed on open space

admeasuring 60’ x 20’ belonging to the society. The society alleged that the petitioners are not entitled to carry on the construction activities. This prayer was granted by the trial Court which restrained the petitioners from using the open space and retaining the fencing. The trial Court, however, observed that the petitioners would be entitled to pay charges to retain the fencing. This last part of the order of the trial Court has also been reversed by the appellate Court which permanently restrained the petitioners from using the disputed open space and carrying on any structure on the open space.

3. The petitioners have not been able to point out any title or right vested in them to use the open space. The orders of the Courts below are, therefore, liable to be upheld.

4. Mr.Patil, learned counsel for the petitioners, however, submitted that the society is permitting other members to use their open space on payment of certain charges. This fact is not denied by the learned counsel for the respondent-society. In the circumstances, I consider it appropriate in the interest of justice to direct the society to consider the application, if

properly made, to allow the petitioners to use the open space, in accordance with such norms as may have been framed by the society.

5. With the above observations, both the Writ Petitions are dismissed.

Sd/-

S.A. BOBDE, J.